



House of Commons
Examiners of Petitions for
Private Bills

Holocaust Memorial Bill: Report from the Examiners and Statement of Reasons

Session 2022–23

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Examiners of Petitions for Private Bills

The Examiners are appointed by both Houses in accordance with the Private Business Standing Order 69 (Appointment of Examiners of Petitions for Private Bills) of each House. In the House of Commons the appointment is made by the Speaker, in the House of Lords by the House itself.

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Report from the Examiners

We hereby report that in the case of the Holocaust Memorial Bill pending in the House of Commons certain Standing Orders relating to Private Business apply, namely:

- Standing Order 4
- Standing Order 4A
- Standing Order 10
- Standing Order 11
- Standing Order 38
- Standing Order 39

and we further report that these Standing Orders have not been complied with.

Signed

Tom Healey, Clerk of Bills, House of Commons

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Statement of Reasons

Introduction

1. The Holocaust Memorial Bill ('the Bill') was introduced into the House of Commons by the Government on 23 February 2023. The Bill contains two substantive provisions: Clause 1 permits the Secretary of State to incur expenditure for the purposes of constructing, operating and maintaining (a) a memorial commemorating the victims of the Holocaust and (b) a centre for learning relating to the memorial, and Clause 2 provides that sections 8(1) and 8(8) of the London County Council (Improvements) Act 1900 ('the 1900 Act') do not prevent, restrict or otherwise affect the carrying out of any of the activities described in Clause 1, in relation to the land described in that section. That land is Victoria Tower Gardens, and the relevant sections in the 1900 Act require the land at Victoria Tower Gardens to be laid out and thereafter kept and maintained for use as a garden open to the public.

2. As the Bill was considered in the opinion of the Clerk of Legislation to be *prima facie* hybrid, after receiving its First Reading on 23 February the Bill was referred to the Examiners of Petitions for Private Bills. Under House of Commons Private Business Standing Order 224, the Examiners must in these circumstances report whether any of the Standing Orders, compliance with which in the case of a private bill is to be proved before an Examiner, are applicable to the Bill and, if they are, whether or not they have been complied with. The Examiners also have leave to report to the House of Lords, if the House of Lords so orders; House of Lords Private Business Standing Order 83 provides for the Examiners to certify also on the applicability of, and—if relevant—compliance with, the equivalent House of Lords Private Business Standing Orders. The relevant Standing Orders are those numbered 4 to 68 in the case of each House, and they are applicable only if the Bill is hybrid. The Examiners must therefore first determine the issue of hybridity and then, if the Bill is found to be hybrid, determine whether the applicable Standing Orders have been complied with.

3. Accordingly, an examination was held on 17 April 2023.¹ At this hearing, we heard from Robbie Owen, the Parliamentary Agent for the Secretary of State, as well as representatives of five organisations and other parties which had submitted memorials (representations that the Bill is hybrid and that the Private Business Standing Orders do apply). Memorials had been received from the London Historic Parks and Gardens Trust, the Thorney Island Society and Residents of Westminster, Baroness Deech and Holocaust Survivors, the Buxton Family and the Thomas Fowell Buxton Society, and Westminster City Council.² The Government also submitted written representations in advance of the examination.

4. The purpose of the examination was not to consider the merits of the Bill, of the Holocaust memorial and learning centre or of the proposed location, and the Examiners express no opinion on these matters. The principle of the Bill will be considered by the House of Commons as and when the Bill is debated at Second Reading, and issues relating

1 A transcript of this hearing can be found on the [Parliamentary website](#).

2 One further memorial—from Sir Peter Bottomley MP—was received after the submission deadline, so under Standing Order 224(4) the memorialist was not entitled to appear before us. All memorials, and the Government's written representations, can be viewed on the [Parliamentary website](#).

to the design and location of the memorial and learning centre will be subject to separate planning processes.³ The role of the Examiners is solely to consider the issue of potential hybridity and the applicability of, and compliance with, the Private Business Standing Orders.

5. ‘Hybridity’ is most commonly understood by reference to the definition given by Mr Speaker Hylton-Foster in a debate on the Local Government Bill in December 1962:

I think that a Hybrid Bill can be defined as a public Bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class.⁴

This is the definition which has been used as a starting point for consideration by our predecessors as Examiners,⁵ and which has been used in successive editions of Erskine May since at least the early 1970s, with the current edition reading as follows:

Hybrid bills are public bills which are considered to affect specific private or local interests, in a manner different from the private or local interests of other persons or bodies of the same category, so as to attract the provisions of the standing orders relating to private business.⁶

The Hylton-Foster definition was also recognised by all parties who appeared before us. We therefore use this understanding of hybridity as the basis for our consideration of this Bill.

6. It is important to note that the test for hybridity is distinct and separate from that used to consider whether a particular individual or group would have a ‘right to be heard’—that is, that they would be entitled to petition against the Bill in the event that it should be considered hybrid. Some memorialists presented arguments that appeared to conflate these separate tests. Decisions as to whether particular parties should be able to petition against a bill are entirely for the Select Committee on a bill and this report should not be read as offering any opinion on this in relation to any of the memorialists.

Findings with regard to differential effect on private and local interests

7. We have to consider, first, whether there are any private or local interests affected by the Bill and, second, whether any such interests are affected in a way which is different from the way that others within the same category or class are affected. For these purposes, ‘private interests’ is a broader concept than legal interests, such as property rights. It includes such interests that an individual has that are identifiable in relation to a place, even if they are not legally enforceable.

3 Mr Owen, for the Secretary of State, told us that the Bill “would in no way alter or circumvent” and “does not and cannot replace or supplant” the future planning process for the design and building of the memorial and learning centre, but added that it will be for the determining Minister in the Department for Levelling Up, Communities and Housing to decide what the future process should be (Examination hearing, 17 April 2023, AM sitting, [para 19](#); PM sitting, [paras 158–163, 194–7](#)). See also Representations on behalf of the Secretary of State, [para 6.1](#).

4 HC Deb, 10 December 1962, [col 45](#).

5 See, for example, the report of the Examiners on the [Local Government Bill \[HL\]](#), 29 June 2020, HL Paper 12, paragraph 12, and the report of the Examiners on the Aircraft and Shipbuilding Industries Bill, 17 February 1977, HL Paper 71, p5.

6 [Chapter 30, Paragraph 57](#).

8. We consider that each member of the public has a private interest which is affected by the Bill. The 1900 Act makes provision requiring the maintenance of Victoria Tower Gardens as “a garden open to the public”. The 1900 Act therefore gives the Gardens a protected status, and this is of benefit to each member of the public because it preserves the Gardens as a green space for the good of all. The Bill would remove that protected status to the extent that the land would be exposed to the normal planning processes for the purposes of building a Holocaust Memorial and an accompanying centre for learning. Indeed, the purpose of Clause 2 of the Bill is to pave the way for the use of the land at Victoria Tower Gardens to be significantly altered and for the Gardens to be reduced in size. We consider that the removal of the land’s protected status alone would adversely affect the private interests of all members of the public in the Gardens’ preservation quite separately from any development of the land that may follow.

9. We consider that the private interests of those who live close to Victoria Tower Gardens are affected differently from the private interests of other members of the public, as they are affected to a greater degree by the loss of the protection afforded by the 1900 Act than people who live far away from the Gardens. It is self-evident that residents of a specific local area have a particular local interest in the amenities, including green spaces, provided therein. Local residents would be particularly affected by the removal of the protection enshrined in the 1900 Act and the consequent lack of certainty that this would introduce as to the future of the space and its surrounds.

10. The Bill would therefore have a much greater adverse effect on the private interests of local residents in the Gardens’ preservation than it would have on the private interests of other members of the public in the Gardens’ preservation. The interests of local residents would be affected in a different manner from those of other members of the public.

11. We note Mr Owen’s argument relating to the challenge of determining where to draw the line in terms of which members of the public would be differently affected.⁷ However, in our view, it is not necessary to draw any such line: the test is whether it is possible to identify particular private or local interests that are differently affected and, in our view, it is. The interests of local residents are clearly affected in a manner different from the interests of members of the public who live far away from the Gardens.

12. For a bill to be found to be hybrid, it is only necessary for the test of hybridity to be met in respect of one private or local interest. It is therefore not necessary for us to go on to consider whether the test of hybridity may be met in respect of any other private or local interests.

Conclusion

13. We find that the Holocaust Memorial Bill is hybrid, and that the Private Business Standing Orders are applicable to the Bill.

14. Accordingly, our examination was continued on Thursday 18 May to consider which Standing Orders were applicable to the Bill and whether they had been complied with.⁸

⁷ Examination hearing, 17 April 2023, AM sitting, [para 62](#).

⁸ A transcript of this hearing can be found on the [Parliamentary website](#).

15. **Following this further hearing, we find that the following Standing Orders are applicable to the Bill and, furthermore, that they have not been complied with:**

- **Standing Order 4**
- **Standing Order 4A**
- **Standing Order 10**
- **Standing Order 11**
- **Standing Order 38**
- **Standing Order 39**

16. Rarely are the Examiners called upon to make a decision as to the hybridity of a public bill, and so there are few precedents for us to refer to. Those that do exist relate to very different bills; we have not identified a bill with similar provisions to the one before us,⁹ which is why this report does not make many references to previous bills or decisions of Examiners. Given the lack of clear precedent and the highly unusual nature of this Bill, we are therefore grateful to the parties and those representing them for their assistance during the examination.

⁹ Although the [Legislative Reform \(Epping Forest\) Order 2011](#) had similar provisions and provides a useful example from secondary legislation.